



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1996

Mr. Leonard W. Peck
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77432-0099

OR96-1783

Dear Mr. Peck:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 35778.

The Texas Department of Criminal Justice ("TDCJ") has received a request for information concerning an accident which occurred on December 4, 1994.¹ You assert that this information is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

We note initially that among the documents you seek to withhold is an accident report form. *See* Transp. Code § 550.064 (officer's accident report). The Seventy Fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d,² amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident

¹You indicate that the requestor, who represents an individual injured in the accident, has already been provided a copy of the individual's medical records.

²Effective September 1, 1995, article 6701d was repealed and codified as part of the Transportation Code. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 24, 1995 Tex. Sess. Law Serv. 1025, 1870-71. *See* Trans. Code § 550.065 (release of accident reports). The legislature did not intend a substantive change of the law but merely a recodification of existing law. *Id.* § 25, 1995 Tex. Sess. Law Serv. at 1871. The repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S., in House Bill 391, remains in effect as current law and may be found following section 550.065 of the Transportation Code. *See also* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414.

reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 4413, 4414. Section 47(b)(1), as amended, requires release of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In this situation, we assume the requestor was provided a copy of the accident report.

We now address the applicability of section 552.103(a) to the other documents at issue. To secure the protection of section 552.103(a) a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") Civ. Prac. and Rem. Code ch. 101.

You have submitted to this office a copy of a "notice of claim" letter from an attorney who represents an injured party. Because your request for a decision from this office was made prior the issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing that the notice letter you received satisfies the requirements of the TTCA. We have reviewed the records, and our review shows that they are related to the anticipated litigation. Thus, the TDCJ has met its burden of showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a).³ If, however, this assumption is incorrect and you are not representing that the notice letter complies with the TTCA, then you have not met your burden of showing that litigation is reasonably anticipated for purposes of section 552.103(a) and must release the requested information.

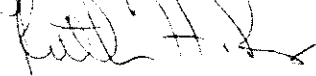
We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4, the TDCJ could choose to release any information that is not otherwise confidential. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the fact presented to us in this request and should not be relied upon as a previous

³We also note that if in the future you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of TTCA.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/SAB/ch

Ref.: ID# 35778

Enclosures: Open Records Decision No. 638 (1996))
Submitted documents

cc: Ms. Mary Ann French
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(w/o enclosures)

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